

U.S. Patent Application Serial No. **10/523,034**
Response filed August 5, 2009
Reply to OA dated April 6, 2009

REMARKS

Claims 1-4, 6-9, 11 and 13 are pending in this application. Claims 1-4, 6-9, 11 and 13 are amended herein. Upon entry of this amendment, claims 1-4, 6-9, 11 and 13 will be pending. Entry of this amendment and reconsideration of the rejections are respectfully requested.

No new matter has been introduced by this Amendment. Support for the amendments to the claims is discussed below.

Summary of Interview conducted July 22, 2009

Applicant's agent, Daniel Geselowitz, conducted a personal interview with Examiner Cole on July 22, 2009.

Applicant thanks Examiner Cole for her courtesy in granting the interview.

In the interview, Applicant proposed claim amendments to overcome the rejection under 35 U.S.C. 112, second paragraph. The Examiner indicated that these amendments would overcome the rejection.

In the interview, Applicant also presented arguments traversing the rejections under 35 U.S.C. 103(a), with discussion of the teachings of the cited references. Applicant's arguments are reiterated below. Examiner Cole agreed that applicant's arguments properly traversed these rejections, and that these rejections would be withdrawn upon submission of a Response.

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Claims 4 and 7-9 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. (Office action paragraph no. 1)

The rejection is overcome by the amendments to the claims. In the present amendment, the “flower thinning agent” is amended to --particulate flower thinning agent-- throughout the claims. This amendment therefore clarifies that the flower thinning agent is in the form of particles. In addition, in claim 4, the definitions of Dxs and Dys/Dxs are amended to recite that the recited diameters are “of interparticle pores and intraparticle pores.” These amendments are generally supported by the disclosure and original claims. For example, parameter P in the original claims is an average particle diameter, implying that the material is in the form of particles. The present amendments are the same as those presented to Examiner Cole during the interview, which the Examiner agreed would overcome the rejection.

Claims 1-4, 6, 11 and 13 are rejected under 35 U.S.C. §103(a) as obvious over Welshimer et al., U.S. Patent Application Publication 2001/0042494 in view of Wertz et al., U.S. Patent No. 6,936,681. (Office action paragraph no. 3)

Claims 7-9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Welshimer in view of Wertz et al., U.S. Patent No. 6,936,681 as applied to claims above, and further in view of Walker, U.S. Patent No. 6,110,866. (Office action paragraph no. 6)

These rejections are respectfully traversed, and reconsideration is requested. Applicant here summarizes the arguments made to Examiner Cole during the interview of July 22, 2009, which the Examiner indicated were sufficient to traverse the rejection.

The rejection is based on the Examiner's statement that it would have been obvious "to have formed the particles of Welshimer so that they had a smaller size as taught by Wertz in order to allow the fertilizer granules of Welshimer to better fertilize and adhere to seeds."

Applicant has three main arguments against this combination:

1) Welshimer discloses a carrier for chemical agents and does not suggest treating seeds. In Wertz, "particle size is dictated by the specific application ..." Therefore, Wertz's teachings regarding particle size, when applied to Welshimer (rejection as stated), will not yield particle sizes appropriate for treating seeds.

2) Welshimer specifically discloses particles of 0.75 to 3.0 mm (see [0037] and [0038]). However, Wertz specifically discloses particles smaller than 150 μm . These are completely inconsistent, and it is impossible to apply Wertz's teachings regarding particle size to Welshimer, as this would result in a non-functional product (and therefore this is not a basis for a *prima facie* case of obviousness according to *In re Gordon*). Note that Welshimer specifically indicates in [0038] that there must be no dust or powder, also arguing against modification of Welshimer to small particle size.

3) Welshimer's composition comprises (a) mineral component, (b) light weight additives, and (c) water soluble binders. Wertz's composition is based on a urea-formaldehyde polymer that releases nitrogen as it decomposes in the ground. These are completely different compositions, functioning in different manners, and these disclosures cannot be combined as proposed in the rejection.

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At column 7, line 46, though column 8, Wertz discloses a composite fertilizer. This is a combination of Wertz's UF polymer particles with other "fertilizer enhancing solids." This might provide a motivation to mix Wertz's UF polymer particles with Welshimer's granules (if these are considered a "fertilizer enhancing solid"), but such a combination would **not** result in a product meeting the limitations of claim 1.

In the interview, the Examiner agreed in particular that the disclosure of Welshimer in [0038] teaches away from modifying Welshimer to have a very small particle size.

Applicant therefore submits that claims 1-4, 6-9, 11 and 13 are not obvious over Welshimer, Wertz, and Walker, taken separately or in combination.

If, for any reason, it is felt that this application is not now in condition for allowance, the Examiner is requested to contact the applicants' undersigned agent at the telephone number indicated below to arrange for an interview to expedite the disposition of this case.

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In the event that this paper is not timely filed, the applicants respectfully petition for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 01-2340.

Respectfully submitted,

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Enclosures: Petition for Extension of Time

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